

PRESCOTT CITY COUNCIL
REGULAR VOTING MEETING
PRESCOTT, ARIZONA
OCTOBER 28, 2008

A REGULAR VOTING MEETING OF THE PRESCOTT CITY COUNCIL WAS HELD ON TUESDAY, OCTOBER 28, 2008, in the Prescott Municipal Building, 201 S. Cortez Street, Prescott, Arizona.

◆ **CALL TO ORDER**

Mayor Wilson called the meeting to order at 3:02 p.m.

◆ **INTRODUCTIONS**

◆ **INVOCATION:** Major Trimmer of the Salvation Army

Major Trimmer arrived late and gave the invocation under *Summary of Current or Recent Events*.

◆ **PLEDGE OF ALLEGIANCE:** Councilman Roecker will be introducing Boy Scouts of America Pack 10 Cub Scouts: Luke Alder, Griffin Hays, Cole Kelley, Andrew Mull and Artie Joe Strom Dubord.

Cub Scouts Pack 10 presented the colors and led the Council and audience in the Pledge of Allegiance, after which each scout introduced himself.

◆ **ROLL CALL:**

PRESENT:

Mayor Wilson
Councilman Bell
Councilman Lamerson
Councilwoman Lopas
Councilman Luzius
Councilman Roecker
Councilwoman Suttles

ABSENT:

None.

◆ **SUMMARY OF CURRENT OR RECENT EVENTS**

On behalf of the Prescott City Council, Mayor Wilson offered condolences to Former Mayor Paul Daly in the loss of his wife, Maureen, and sent their sincere sympathies. With regard to an activity taking place on Sunday, Mayor Wilson asked Councilman

Luzius to read a proclamation, proclaiming November 2, 2008, as *All Faiths, One Prayer Day*. Councilman Luzius read the proclamation.

At this time Major Trimmer of the Salvation Army arrived and gave the invocation.

Councilman Luzius thanked everyone that called him and visited while he was in the hospital. He said that the Yavapai Regional Medical Center did a great job and he thanked Steve Blair for mentioning him on his radio station, and also thanked his wife, who was with him every day.

Mr. Norwood reported that last weekend they had the Dump the Drugs on Saturday morning where they received over 100 pounds of prescription drugs for disposal. Also on Saturday, they had the Pumpkin Patch downtown, where they had between 5,000 and 6,000 people.

I. PUBLIC COMMENT (Please limit your comments to five minutes)

- A. Citizens Water Advocacy Group with presentation on when Prescott may need Big Chino Water.

Howard Mechanic, 309 Bloom Place, said that he was the Chairman of the Public Policy Committee of the Citizens Water Advocacy Group and he provided a written report from the group in the Council packet, but what he was saying today had not been approved by his Board.

He said that the Big Chino Water Ranch project has many challenges; they have talked about the environmental, legal and financial challenges. This is the largest project the City of Prescott has ever done and the public should know who is going to pay for it and when.

He said that the City of Prescott has a policy that 20% of the cost will be covered by the ratepayers which is fair to help reach safe yield. The other 80% of the cost of the project is to go to new growth, so new growth should pay 80% of the cost.

Mr. Mechanic then gave a brief PowerPoint presentation that covered:

▶ Present conditions – As of August 2008, Prescott had 1,840 feet in its Alternate Water Supply portfolio. That amount of water is enough for nine years' water allocations at the 200 ac. ft. allocation that the City has set for approximately the last ten years. Of that, only 1,296 ac. ft. would provide enough water to build homes on all the remaining non-watered lots within the City limits at existing densities. That means they have approximately 50% more water than they need. So, the Big Chino is for new annexed areas, or possibly new annexed areas.

▶ Expected soon – Soon the City is expecting an additional 1,672 ac. ft., or

something approaching that, of alternate water based primarily on recharge credits. A lot of people are not aware that when Prescott applied for alternate water supply a large part of that was based on the Big Chino Water; however the City also applied for 1,672 ac. ft. based on recharge in the AMA, which has no relevance to the Big Chino project. That means the total they can have available would be enough for a 17-year water allocation, which would bring to an approximate population of 76,000.

Mr. Mechanic said that the City has plans to annex 11,000 acres, and indicated that on a map. He said that the question is who was going to pay for it and when. He reviewed the various areas possibly coming into the City and said that those three property owners (State Trust Land, Mr. Cavan, and Deep Well Ranch) should guarantee 80% of the Big Chino Water Ranch project. The value of their property is going to be doubled, tripled, even four times the value right now.

Mr. Mechanic said that they are asking for a discussion because five minutes is not enough time to discuss when this will be paid for and by whom.

B. Presentation of Annual Report by Carlo Pastore, President of Prescott Frontier Days, Inc.

Carlo Pastore, President of Prescott Frontier Days, Inc. said that the Council all had packets that were previously handed out and on behalf of the Board of Directors, the General Manager and all the members, he extended their appreciate gratitude for the support from the City of Prescott and their partnership. He said that it has enabled the City to become nationally recognized, with this year being inducted into the Pro Rodeo Hall of Fame.

Mr. Pastore said that they were able to get a meager profit this year, in spite of the economic times. They were able to pick up sponsorships that made up some of the difference. He said that they attacked the budget and cut it by \$65,000. They have gotten together some of the old mindset and have had discussions with Prescott Downtown Partnership about making Frontier Days a week-long event.

Councilwoman Lopas thanked Mr. Pastore for such a detailed report, stating it gave her a lot of information she had not seen before. Mr. Pastore then introduced the Board members.

Councilwoman Suttles said that it has been a pleasure serving on the Rodeo Board. She said that they go through the same thing that the Council goes through in trying to cut the budget. She said that the Board meets every other Wednesday, and even though the rodeo is in town for a limited time, Prescott does rodeo 365 days a year.

Councilman Luzius thanked him for the presentation and report, and thanked all members of the Board and committee for their work in the past and what they are going to do. He said that he will always support Frontier Days.

Mr. Pastore said that they have 3 paid employees and 947 volunteers, and that is how they pull it off.

II. PRESENTATIONS

A. Introduction of new businesses.

Susan Cohen of the Prescott Chamber of Commerce introduced new businesses, each of which gave some information.

- ▶ Marc Center, 759-8062, www.marccenter.com
- ▶ Legacy Home Health, 443-9331
- ▶ Safety First Financial, 443-9432
- ▶ Air Evac, 602-316-4191
- ▶ Pool and Spa Chalet.

III. CONSENT AGENDA

CONSENT ITEMS A THROUGH G LISTED BELOW MAY BE ENACTED BY ONE MOTION. ANY ITEM MAY BE REMOVED AND DISCUSSED IF A COUNCILMEMBER SO REQUESTS.

COUNCILWOMAN SUTTLES MOVED TO APPROVE CONSENT AGENDA ITEMS III-A THROUGH III-G, EXCLUDING ITEM III-F; SECONDED BY COUNCILMAN ROECKER; PASSED UNANIMOUSLY.

- A. Approve disbursement to Habitat for Humanity in the amount of \$49,999.99 in CDBG funding for the purchase of tools for the lending program.
- B. Adopt Resolution No. 3907-0913 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the City of Prescott to enter into an Intergovernmental Agreement with Yavapai County for County provision of motor vehicle fuel for use in City vehicles, and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.
- C. Adopt Resolution No. 3909-0915 – A resolution of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the City of Prescott to enter into an Intergovernmental Agreement and a Mutual Aid Compact Agreement with the Arizona Department of Emergency and Military Affairs for mutual assistance during emergencies, and authorizing the Mayor and staff to take any and all steps necessary to accomplish the above.

- D. Approve purchase crack sealant from Crafc0, Inc., in a not-to-exceed amount of \$60,000.00, through the ADOT's (Arizona Department of Transportation) contract.
- E. Approve purchase 95 front-loading containers from Action Container Solutions in the amount of \$80,199.95.
- G. Approve Minutes of the Prescott City Council Combined Study Session/Regular Voting Meeting of October 14, 2008 and the Study Session of October 21, 2008.

Mayor Wilson then brought up Item III-F for discussion.

- F. Adopt Ordinance No. 4672-0915 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, authorizing the purchase of real properties, easements and improvements belonging to Douglas Heffner, Loren J. Ridley, James S. and Lucy Greeneich, and the acquisition of certain rights-of-way, drainage easements and temporary construction easements thereform for the widening of Williamson Valley Road, and authorizing the Mayor and City staff to take all necessary steps to effectuate said purchases.

Councilman Luzius said that he wanted to pull this from the Consent Agenda because he has consistently voted against enhancing the Springer/Pearce Superhighway. He does not understand why the City taxpayers have to pay to enhance the approach to their road when the fact remains that they are all taxpayers in the County and they are being double-taxed.

COUNCILMAN LAMERSON MOVED TO ADOPT ORDINANCE NO. 4672-0915; SECONDED BY COUNCILWOMAN SUTTLES; PASSED 6-1, WITH COUNCILMAN LUZIUS CASTING THE DISSENTING VOTE.

IV. REGULAR AGENDA

- A. Public Hearing and consideration of a liquor license application from Clay William Romo, applicant for Clay Romo, LLC, for a Series 07, Beer and Wine Bar, license for Lloyd's Liquors located at 1102 West Iron Springs Road.

Ms. Burke reviewed the application, stating the property had been posted, no public comments had been received and the applicant was present for any questions.

COUNCILWOMAN SUTTLES MOVED TO CLOSE THE PUBLIC HEARING; SECONDED BY COUNCILMAN LAMERSON.

Councilman Luzius voiced concern that the map included in the application was not correct. He said that it was the map provided by the City and if the City is going to provide the information, it should be correct. Ms. Burke replied that she would look into with the IT Department.

MOTION PASSED UNANIMOUSLY.

COUNCILMAN LAMERSON MOVED TO APPROVE THE LIQUOR LICENSE APPLICATION FROM CLAY WILLIAM ROMO, APPLICANT FOR CLAY ROMO, LLC, FOR A SERIES 07, BEER AND WINE BAR, LICENSE FOR LLOYD'S LIQUORS LOCATED AT 1102 WEST IRON SPRINGS ROAD; SECONDED BY COUNCILWOMAN LOPAS; PASSED 6-1 WITH COUNCILMAN LUZIUS CASTING THE DISSENTING VOTE.

- B. Public Hearing and consideration of a liquor license application from Clay William Romo, applicant for Clay Romo, LLC, for a Series 09, Liquor Store, license for Lloyd's Liquors located at 1102 West Iron Springs Road.

Ms. Burke reviewed the application, stating the property had been posted, no public comments had been received and the applicant was present for any questions. She explained that this was for a Series 09 license, and the previous item was for a Series 7.

COUNCILWOMAN SUTTLES MOVED TO CLOSE THE PUBLIC HEARING; SECONDED BY COUNCILMAN ROECKER; PASSED UNANIMOUSLY.

COUNCILMAN ROECKER MOVED TO APPROVE THE LIQUOR LICENSE APPLICATION FROM CLAY WILLIAM ROMO, APPLICANT FOR CLAY ROMO, LLC, FOR A SERIES 07, BEER AND WINE BAR, LICENSE FOR LLOYD'S LIQUORS LOCATED AT 1102 WEST IRON SPRINGS ROAD; SECONDED BY COUNCILWOMAN LOPAS; PASSED 6-1 WITH COUNCILMAN LUZIUS CASTING THE DISSENTING VOTE.

- C. Award of a five-year contract to Fann Contracting, Inc., for hauling services in the amount of \$12.79 per ton, with an amount not to exceed \$805,770.00 per year.

Councilman Bell declared a conflict of interest on this item and Item D, as he is doing consulting work with Fann Contracting.

Mr. McDowell said that last week they had a draft contract and they have reviewed it with Mr. Fann and the final contract has the same context, with a few minor changes. He added that the contractor did not have to give the City a fuel surcharge credit, and he wanted to thank him for that.

Councilwoman Suttles asked for clarification. Mr. McDowell said that when OPUS goes above \$4 gallon, the City gives them additional monies; when it goes below \$4 gallon, the contractor will give the City a credit.

COUNCILMAN LUZIUS MOVED TO AWARD A FIVE-YEAR CONTRACT TO FANN CONTRACTING, INC. FOR HAULING SERVICES IN THE AMOUNT OF \$12.79 PER TON, WITH AN AMOUNT NOT TO EXCEED \$805,770.00 PER YEAR; SECONDED BY COUNCILMAN LAMERSON; PASSED 6-0 WITH COUNCILMAN BELL ABSTAINING.

- D. Award of bid to Fann Contracting, Inc. for the North Prescott Regional Force Main Replacement Project, along State Highway 89 from Lillian Lane to Willow Creek, in an amount not to exceed \$4,081,000.00.

Mr. Nietupski briefly reviewed the project.

COUNCILWOMAN LOPAS MOVED TO AWARD A BID TO FANN CONTRACTING, INC. FOR THE NORTH PRESCOTT REGIONAL FORCE MAIN REPLACEMENT PROJECT, ALONG STATE HIGHWAY 89 FROM LILLIAN LANE TO WILLOW CREEK, IN AN AMOUNT NOT TO EXCEED \$4,081,000.00; SECONDED BY COUNCILMAN LUZIUS; PASSED 6-0 WITH COUNCILMAN BELL ABSTAINING.

- E. Adoption of Ordinance No. 4673-0916 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, vacating and abandoning certain municipal rights-of-way which consist of portions of Garden Street and an alley located west of and parallel to Grove Avenue south of Sheldon Street and sell and convey to Prescott College and authorizing the Mayor and City staff to take all necessary steps to effectuate such vacations and abandonments.

Mr. Nietupski said that this was a request from Prescott College to enhance their campus environment and eliminate cut-through traffic in the alley.

Councilwoman Suttles said that it was coming to them as one ordinance, but it was really two different issues, and asked if it could be split out. If not, then it would be a no vote for her.

Councilman Roecker said that he agreed; he was not in favor of Garden Street being closed or sold.

Councilman Luzius said that he has been out in the neighborhood and he thinks they are setting a bad precedence. His opinion is that if Prescott College wants to provide a friendly environment, they should build a bridge

on Garden Street. He said that he was in the area and came through the alley, and almost got rear-ended.

Councilman Lamerson said that he has also been in the area and looked at it from several perspectives. He can see problems on the street and he knows that sometimes there are floods. On the other hand, he has an alley behind his building and he does not think it is right to close off alleys.

Councilman Roecker said that there is a definitely a dangerous situation in the alley and he is not in favor of closing the alley. There are other issues that need to be considered. They counted 70 cards in that little area. He is hoping that the College would look at this and come back with a better plan. At this point, he would vote no.

Councilman Luzius said that back in history when the forefathers laid out that design, there was a purpose, and any time they close down an alley or street they are losing that connectivity.

Bill Feldmeier, representing Prescott College, said that he was unable to make the meeting last week and after he reviewed the information conveyed by Prescott and staff, and the neighbors, he had some long conversations with the College. He said that he began conversations with neighbors Friday and yesterday, and he was before the Council today to ask for a continuance. He believes that further discussions could be fruitful and they would like to ask for 4-6 weeks, with the idea to come up with a win/win situation. In that regard, in relation to parking, the questions were legitimate and they will be prepared to offer that information as well.

Councilman Bell said that he would certainly be in favor of a continuance to give the College a chance to meet with the neighbors.

MAYOR WILSON MOVED TO DEFER ACTION ON THIS ITEM TO THE DECEMBER 2, 2008 COUNCIL MEETING; SECONDED BY COUNCILWOMAN LOPAS; PASSED 6-1 WITH COUNCILMAN LUZIUS CASTING THE DISSENTING VOTE.

Councilwoman Suttles said that the neighborhood and school is at an impasse and them going out and visiting is a huge plus. She said that they have been excluded for some of the things going on at the campus, and she has received a number of phone calls regarding it. She said that negotiation is a matter of compromise on both sides.

- F. Approval of a professional services agreement with J2 Engineering and Environmental Design for engineering services to update the FEMA flood plain determination of Granite Creek in an amount not to exceed \$92,935.00 (reimbursed by Yavapai County Flood Control District).

Mr. Nietupski reviewed the agreement with J2 Engineering and Environmental Design. Councilman Luzius asked where the funds were coming from. Mr. Nietupski replied that they are reimbursed 100% from the Yavapai County Flood Control District.

Councilman Lamerson said that he had originally requested this be pulled from the Consent Agenda. He had the opportunity to speak with Michael Byrd of Prescott Creeks and was assured that they had some input.

COUNCILMAN LAMERSON MOVED TO APPROVE A PROFESSIONAL SERVICES AGREEMENT WITH J2 ENGINEERING AND ENVIRONMENTAL DESIGN FOR ENGINEERING SERVICES TO UPDATE THE FEMA FLOOD PLAIN DETERMINATION OF GRANITE CREEK IN AN AMOUNT NOT TO EXCEED \$92,935.00 (TO BE REIMBURSED BY YAVAPAI COUNTY FLOOD CONTROL DISTRICT); SECONDED BY COUNCILWOMAN SUTTLES; PASSED UNANIMOUSLY.

- G. Approve Amendment One to City Contract #08-207 with Saguro GeoServices, Inc., for professional engineering services for Lowe's retaining wall design review in the amount of \$22,206.80 (reimbursed by Lowe's).

Mr. Nietupski said that based on Council's direction at the meeting last week they contacted Lowe's and today the City received the initial \$18,620.00 check and the other check for the above amount is being delivery tomorrow. Should the Council approve the amendment, they would not disburse the funds until the check from Lowe's had been received.

Councilman Luzius said that if the wall had been done properly these would not be on the agenda, and he would be voting no.

COUNCILMAN ROECKER MOVED TO APPROVE AMENDMENT ONE TO CITY CONTRACT #08-207 WITH SAGUARO GEOSERVICES, INC. FOR PROFESSIONAL ENGINEERING SERVICES FOR LOWE'S RETAINING WALL DESIGN REVIEW IN THE AMOUNT OF \$22,206.80, AFTER THE CITY HAS BEEN REIMBURSED BY LOWE'S; SECONDED BY MAYOR WILSON; PASSED 6-1 WITH COUNCILMAN LUZIUS CASTING THE DISSENTING VOTE.

- H Water and Sewer Development Fees:

1. Adoption of Water and Wastewater Capital Improvement Plans.
2. Adoption of Ordinance No. 4665-0908 – An ordinance of the Mayor and Council of the City of Prescott, Yavapai County, Arizona, amending Title II, Chapter 2-1 and Title III, Chapter 3-14, of the

Prescott City Code, regarding the imposition of water and sewer development fees.

Mr. McConnell said that since last week a memo was sent to the Council re deferment, and most of those remarks pertain to the sewer fund specifically. He said that the Sewer Fund is particularly needy for capital improvements as pointed out during budget sessions. Without having done the sewer model, the City had not identified the extent of the capital needs, and that was accomplished with the sewer model. This wastewater and water study was done which translates into the fee contained in the draft ordinance.

Also, two of the attachments are candidate projects for deferral if these are not implemented. If the Council chooses to defer or adopt the fees and defer the effective dates, the staff would adjust the CIP beginning in the next regular City budget update which starts in January. They have stressed many times that because of all the factors that go into the needs, the financing of the needs, the market, the economy, it is their recommendation to update these every two years. They are one year into the process and before they know it, if Council concurs, they will start in about a year from now. He said that Dan Jackson was present should there be any technical questions pertaining to the study itself.

Councilman Bell said that since he was the one that suggested the delay in implementation last week he wanted to say that with the economy the way it is, with the nation, state and local city, he thinks it is a terrible time to be raising fees on anyone. He will continue to ask that they delay implementation to July 11, 2009, but go ahead and approve the fees.

Councilman Roecker concurred with Councilman Bell. He has fought with himself over the issue the whole week and he cannot see approving this at this time because of the economic conditions of the country. He recognized that they will have to defer some issues but he thinks it is necessary. They have got to give those people buying houses in the community a little time. He said that for those in the public who thinks that the Council is in the pocket of the builders, in his mind it goes way beyond that—there are a lot of families in the community that are reliant on having jobs and it is important that they give every possible chance for that to happen.

Councilman Luzius said that he was not in favor of any extension. He said that they extended it two years ago and did not apply the sewer fees or change the water fees. What they are doing by postponing it is they are laying extra burden on the citizens of Prescott that are there now.

Councilman Lamerson said that the economy stinks and it is the wrong time to raise taxes of any kind. He thinks that impact fees are a volatile way to finance growth paying for growth. He thinks that impact fees are the wrong

tool and they have set themselves up for the calamity using that tool. There are other ways, such as public/private partnerships and use of property tax, things that are more sustainable. It will be a long time before they are collecting impact fees and they will be putting it on the back of the ratepayers to pay the bonds off. He said that he does not support it either way.

Councilwoman Suttles said that they have an ordinance and the concept of a six-month delay is not in front of them and she wanted to know if that could be added. Mayor Wilson said that they could do that by way of motion. Mr. Kidd said that was possible.

Councilwoman Suttles said the information they got from Mr. Jackson was about \$2,000 for both impact fees. Mr. Jackson said that was correct, for a 5/8" meter. Councilwoman Suttles asked about the next meter size. Mr. Jackson said that he did not have the fees in front of him, but the fees would be higher to make up for the fact that the larger meter impact fees that are currently in place are significantly under-recovering the amount of growth-related expenses that the City is incurring to provide service to those meters. He said that approximately 80-85% of the new connections of the City are 5/8" residential meters.

Councilwoman Suttles asked if that applied to commercial as well. Mr. Jackson said that typically the meter size is larger than 5/8" for commercial.

Councilman Suttles said that she was given a sheet that indicated that the impact fees were at odds with the General Plan, and she asked if that was correct. Mr. McConnell said that as he understands the question, embedded in the question is a legal question. The legal question is, the City of Prescott adopted a General Plan which has text or provisions and if a financing mechanism (impact fees, construction sales tax, etc.) is not specifically mentioned as a way or tool for financing future growth, whether that makes an impact fee ordinance at conflict with the General Plan.

Mr. Kidd said that the General Plan sets out zoning requirements; this particular ordinance is specific in terms of the methodology that is used to calculate. The law says that in statutory interpretations, when there are two different ordinances that are inconsistent, they are trying to give effect to both. The General Plan uses the term "fixtures" and the proposed impact fee ordinance does not; it is based on a metering charge. The question is whether or not that is inconsistent. Both of them could be read together. His view is that the impact fee ordinance is the most specific and so, generally speaking, in statutory construction the more specific ordinance will be given effect.

Councilwoman Lopas said that she agrees with some and disagrees with some of them. In the Courier it talked about the Brown Family and their loans being called. People are not pulling permits to build because they are cannot get a loan; it is a credit crunch that is causing the crisis. Delaying the impact fee is not going to change the credit crunch. It is a national issue and is beyond local control.

Mayor Wilson said that they all received a memo from Mr. McConnell on the effects of deferred implementation of the water and sewer impact fees. He said that it is important to recognize some of the things said, such as the \$3.2 of growth-related project work that is crucial should not be delayed under any circumstances, and will of necessity have to be financed through a bond issue. If they do not approve these impact fees, what they really have to say is they are going to stop that kind of work because they don't have the money. It is not an issue of the economic times, it is an issue of whether to continue the plans they have or not.

Councilman Lamerson said that he agreed with what Councilwoman Lopas was saying, but that was his point on the nature of impact fees. They build billions of dollars in infrastructure in the community and charge people a one-time fee to do certain things and then it is there forever. Impact fees are the wrong fees to use to try and deliver all of the basic services and capital improvements. They are a very volatile way to try and compel growth to pay for growth.

He said that every year they go into the budget scenario where they discuss raising impact fees knowing that they are not keeping up with the ball. It is like they are using the wrong mechanism, but keep using the same tool. If they are not collecting impact fees they will have to go to the ratepayers.

Councilwoman Suttles said that they all received a letter from the Yavapai County Contractors Association. Councilman Lamerson feels that impact fees are not the way to go, there has to be a different route. The YCCA submitted a list of 21 different ways of dealing with impact fees, but as soon as they pick one, there will be another group stating it is not fair to them.

Mayor Wilson said that YCCA submitted 21 categories with no recommendations, which could be done by looking on Wikipedia to find every financing mechanism in the world. He thinks they should pass the impact fees as they are a year into the cycle and that gives them a year to come up with a solid recommendation to bring forward.

Councilwoman Suttles said that if they pass the ordinance with the six-month delay, they are still moving forward. Mayor Wilson said that it would give them another year to look at other alternatives. He said that he would be

happy to look at other alternatives. They gave the YCCA to come up with a recommendation, and he did not see one.

Councilman Lamerson said that he does hear the experts standing before them telling them that they have significant problems if they don't do some of the work. He understands what they are going to have to do and that if they don't do it, they are not acting in the best interests of the community in many ways. He also understands that in another year they will be looking at raising or lowering impact fees again. His point is that they are using the wrong tool.

Councilwoman Suttles said that this year they are looking at 91 building permits, versus hundreds in past years. Mr. McConnell said that Mr. Jackson has pointed out several times that the 91 permits are consistent with the projection of the study for 2008. He said that the question is how fast that permit activity will rebound, which ties back into the bi-annual update because if there is little change in the economy the future permit activity is not going to be 600 permits, it will be much less than that.

Mr. McConnell said that another thing to be pointed out is that they must always remember that they go through an annual budget process and update their six-year capital improvement program (CIP). It is entirely true that growth-related capital expenses are financed in the enterprise fund (water or sewer), and the financing source is the ratepayers. They are paid back and will be paid back. If it is the determination of the City that the long-term capital program is too aggressive, that they would be incurring too much debt and it would require too much to pay back, or would not be paid back, then the CIP needs to be delayed. That is done through the annual budget process and the bi-annual update. It is not like the ratepayers are going to be left holding the bag; there are checks and balances.

Councilwoman Lopas said that the impact fees are for the new growth. The ratepayers are paying for any maintenance on existing lines, and they are being collected. Mr. McConnell said that is entirely accurate, including that the City of Prescott operates enterprise funds. Those funds are not supported by property tax or sales tax; they are enterprise funds through rates and impact fees. If the City incurs capital debt for growth-related expenses, the money comes from the enterprise fund. The ratepayers advance the monies, but they are paid back. It is a ten-year program, with a ten-year pay back period, and the borrowing for the capital expenses can go out to thirty years.

Steve Blair, 1802 Northside, said that he was glad to see Councilman Luzius sitting there, no matter what he may say from time to time, he does respect him. He said that they had dialogue about a 5,000 sq. ft. home that if it had a sprinkling system, they would be allowed to have a 5/8" meter. With this

change of rates, he asked if that would change. Councilman Luzius said that would not change.

Mr. Blair said that he agreed with Councilman Lamerson. If they believe they are going to hang the bone around the person moving into the community and charge all the rates based on new growth, they are not going to fix their infrastructure. There has to be a combination of property tax, to fix what is there now, plus an element that is tied to growth. He said that he has not heard anyone talk seriously about a property tax increase. Back in the day of Phil King, the Councils reduced and reduced. They are in a time right now where they need to have a property tax increase to pay for a lot of the underground infrastructure that has been in place for years.

Mr. Blair said that they had a sewer line blow up right behind Mountain Oak Charter School and the citizens of the City paid for the repair and the damage to the school. He asked how many times they are going to allow that to happen.

Mayor Wilson said that, as stated earlier by Councilwoman Lopas, the water rates were raised substantially to pay for repairs and the growth is paying for new construction. Mr. Blair said that he would suggest then that they change the General Plan that states “fixture units” to determine the fees.

Chris Hoy, 1880 Coyote Road, said that he was the President of CWAG and was there to read a four-sentence statement, approved by the Board of Directors, *“Water and wastewater infrastructure for new users should not be subsidized by current residents. If water use is subsidized, our goal of conservation will be substantially negated. CWAG supports full and fair impact fees for all new users. If the jurisdictions wish to promote work-force housing or other new construction, they should do so in a way that does not subsidize the cost of water or discourage conservation.”*

Leslie Hoy, 1880 Coyote Road, said that she was speaking as a member of the “impact fee committee” that was put together on August 26, when she volunteered as a citizen, and later Howard Mechanic and John Danforth also became members of the committee. The citizens were only invited to participate in the committee twice, although there were a lot of other meetings that went on. Mr. McConnell was pretty good about keeping a record of the correspondence, which they did receive. She had to leave early at the last meeting so she wrote to Mr. McConnell a question regarding the suggestion to delay implementation of the fees for an additional six months, if the growth-related projects would also pushed back an equal amount of time. She is still not sure whether those would be pushed back.

Mr. McConnell said that it is cause and effect. If the effective date is not there, or pushed out and the money was not there, then there would be an

effect. That is about the only response they can give because there are a lot of unknowns—how many building permits will come in, what is the specific status of a number of projects which comprise the capital plan, etc. The best response is a general response, and to consider a six-month window he could not say would have a dramatic effect. It will have an effect, but not a dramatic one.

Ms. Hoy asked if the growth-associated projects were not pushed back, how they would be paid for in the interim and who foots the bill. Mayor Wilson said that was answered earlier—by the ratepayers and they are paid back.

Ms. Hoy asked them to elaborate on how the ratepayers are paid back. Mayor Wilson said that the funds are borrowed between funds. Ms. Hoy asked if there is interest paid; Mayor Wilson replied that they did not.

Ms. Hoy said that from reviewing Mr. Jackson's study and being privy to all the questioned asked by the YCCA, she understands that Prescott's share of the cost of the Big Chino Pipeline are covered in the study and the ratepayers are already paying 20%, for which they don't have a choice. She asked if Prescott's 54% share of the \$144,000 that she read about in Sunday's paper is being spent without a Council vote for the PR firm to sell the citizens on the Big Chino project, are included in the approximately \$80,000 for the Big Chino to be paid by impact fees. Mayor Wilson replied that they were not. Ms. Hoy asked where that money was coming from. Mayor Wilson said that he would have to get back to her on that.

Ms. Hoy said that the whole process of approving the impact fees does appear to be broken. She does not know what the answer is, but if they would pass the impact fees then maybe it would be good to form some kind of committee to examine the process and try to come up with something better because otherwise it goes on year after year.

Ms. Hoy said that when she called Councilwoman Suttles on her show this morning, she implied that because many of the CWAG Board Members are retired, they are not qualified to speak. She wanted to point out that Mayor Wilson, Councilman Luzius and Councilwoman Suttles are retired and Councilman Bell is older than everyone on the CWAG Board.

Bill Kindig, 4866 Comanche Trail, said that when this first started he reviewed the report presented and he thought it was a good job, but after sharing all the things that have been going on, and the questions raised, he thought maybe he missed something, so he spent the weekend reading it again.

He concluded, again, that it was a pretty good job. Then, he asked what he was missing and he thought it was some proof that what the answer

provided in the study is an accurate study. He went back and did something different. He took a review of the wastewater impact fees proposed and saw that it was 59.8% because it has not been updated for 14 years. That gave him a percent per year of 4.6% if they had been doing it all along. Then, he asked what independent information he could get that said that was either good or bad. He looked at the Bureau of Labor Statistics data available on the web and chose highway and street construction indexes, looking at the heavy construction index. He found that the BLS from 1995 to 9/08 increased 107 points, or 90.3% during that period, an average increase of 6.9% per year. The BLS data for heavy construction for the same time period increased by 84.8 points, an increase of 65.3% during that period, or an average of 5.0%. Comparing this to the 4.6% increase – they both exceed what is being recommended in the study. His conclusion is that they would be higher if used nothing but the index, and to him that supports the study and the recommendations.

Mr. Kindig said that they already talked about what would happen if construction continued without the fees. The funds would come from the citizens somewhere. He had two recommendations to be considered: 1) the fees proposed are reasonable based on the work he did over the weekend; and 2) if the impact fees are not approved and construction continues, they add information to the City's financial statements showing the annual and cumulative costs for growth that are being paid by the residents of Prescott.

Steve Conrad, 1753 Rolling Hills Drive, Executive Director of Central Arizona Partnership, said that he first wanted to thank the Council for allowing the 45 days extra to review these further with the YCCA. He said that it was his understanding that their charge was to consider alternatives, not necessarily make recommendations. They did provide a short-list of alternatives. They are not in favor of approving the fees as they are right now. He feels sorry for Jane Bristol; he would not want to be in her shoes trying to entice commercial development into the City with the fees being proposed. The numbers for a 1" meter go from \$18,000 to \$35,000, on a 1 ½" meter from \$36,000 to \$71,000 and on a 2" meter they jump 98% from \$56,000 to over \$113,000. That is a major hurdle to stimulating jobs.

Mayor Wilson said that those fees are being raised substantially because they have not been raised for a number of years. That would say that the contractors had their hands in his pocket when those fees were not raised.

Howard Mechanic, 309 Bloom Place, said that growth should pay the full cost of what it takes to provide the infrastructure and by delaying they are saying they don't have to pay the full cost, on the backs of the ratepayers. He said that if he thought that cutting the impact fee by \$2,300 per home would jumpstart the economy, he would probably be on their side. He talked with Dr. Danforth who is a Ph.D in Economics, about a six-month delay.

During that six-months they may get 50 homes. He asked how many more homes they will they get if they reduce the impact fees \$2,300. According to the theory of elasticity, when prices are dropped there is increased demand but this is so much of small drop and the market is so overbuilt that they will expect one home or less. They would reduce the impact fee for 50 homes, losing \$2,300 per home, over \$100,000 to get one home, maybe. He said that the Courier last week said that the construction industry needed a shot in the arm and this was the way to do it. He said that is like having a jogger running down the street that gets hit by a car, and they give them a shot in the arm expecting it to keep him running. It is a way to lose money and have ratepayers cover the cost of growth. It will not stimulate growth.

He said this is not the time to start looking at other alternates; they would have to throw the study out. They can look at it for the next study.

John Danforth, 2737 Lookover Circle, said that he wanted to endorse what Councilman Lamerson said regarding the impact fee. It is a clumsy tool, but the problem is a lack of alternative right now. He would recommend highly that the Council take this seriously. He spoke with Councilman Lamerson about the possibility of coming up with a magic bullet and it is difficult. The sooner they start to take this seriously and try to find alternatives that are less clumsy, are equitable, and achieve the objective they have in mind, the better. He does not think that is going to happen within the next few days or even in the next six months. A year or so might give them enough time. For the time being, he would wholeheartedly encourage passage of the recommendation as is, without delays.

Tammy Linn, 1401 Claiborne Circle, said that she has a banking and business background, and the thing that concerns her the most is not the residential impact fees. It is a 98% increase for 2" meters. She asked how many have been to Sam's Club, Cracker Barrel, Hamton Inn. They are going there because they don't have the level of impact fees and they are making the environment more positive. By increasing the impact fees for the large meters is going to be a huge detriment. She has been driving by the potential Chili's location for year wondering if it is ever going to come here. Her common sense says that they need jobs, sales tax, and they should not be putting another \$50,000 impact fee on those businesses when they can go to the Reservation, Chino Valley, or Prescott Valley. This is a big decision. She thinks they should vote it down.

Jim Lawrence, 345 High Chaparral Loop, said that in 1995 he was a member of the original citizens committee that recommended impact fees for either increasing those already in place or new ones. He agrees that there may be other ways to do this, but in terms of what an impact fee, it is not trying to manage growth, it is not a tax. It is a very simple thing. When a new development comes in, as a water provider they must provide them water. At

that stage they would go out, drill a well, put a pump into the well, then look at the customers they were going to service, the 50 homes. Those 50 homes would be charged a one-time fee to provide the water. It is not a maintenance situation; it is the original drilling of the well or running the pipes. If they took a look at any one of those homes and say they are not going to charge them their fair share of that cost, and ask their neighbors who already have water to pay a portion of that, that is not fair and that is what they are doing if they do not charge the new users.

George Seaman, 1830 Idylwild Hill, said that he has no comment about approving an impact fee or not, but he does hear two different discussions taking place. He hears one about residential impact fees and another about commercial. He is wondering if it would help them to consider them as two separate issues and vote on them separately.

Gary Hudder, 422 Arizona Avenue, said that he wanted to correct the record on a few things. The process over the last few weeks has turned into “bash the developers” or at least there are some feeling that way. The developers are not the rich, irresponsible thieves trying to steal from the pockets of the community. They are business leaders; they provide jobs and employee payroll taxes. The money they generate from their work moves around and around in the community, paying for other services. If the goal is to try and get into the pockets of the greedy developers, they don’t pay it—it is a fee that is passed through to the customer.

He said that when they began the process a few weeks ago, they understood that their charge was to present alternatives, but when they started digging into the numbers they realized they are not economists and found things that did not make sense to them. The nature of them inquiring was not to question the name and reputation of Economists.com or City staff, it was simply that they were trying to put their arms around it. He said that they are not anti-impact fees. There are two in the crowd today whose businesses gain greatly from the City spending money on construction.

He said that they would like to propose that beyond this particular event, that a blue ribbon panel or something be considered to look at this process. Mayor Wilson said that it has been equal opportunity bashing from his standpoint. He is not bashing the contractors, as he sits on the Council with one. He has heard the argument that they are raising the fees to stop growth, and that is not true. They have hired Economists.com and a lawyer to come up with a fair and equitable way to put the impact fees out. It is not the best of time to do it, and he is not trying to bash anyone, nor is anyone on the Council. He would be happy to set up a panel to look at the issue.

Councilman Bell said that maybe his request for a delay has been misconstrued. He had in mind that if they had a six-month delay that it would

really be eight months away, which might stimulate the construction industry a little. If he was trying to build a new house he would be going to his architect and tell him to get busy so they could get the building permit to get the lower impact fees.

COUNCILMAN BELL MOVED TO ADOPT ORDINANCE 4665-0908, WITH A COUPLE OF AMENDMENTS: 1) THE IMPOSITION OF THE FEES WOULD TAKE EFFECT ON JULY 11, 2009; AND 2) THE FEES WOULD BE DUE AND PAYABLE ON CERTIFICATE OF OCCUPANCY.

Mr. McConnell said that the Statutes provide for the mechanism for a development agreement for the second amendment. It cannot be done in a blanket motion. Mr. Kidd agreed; it is only available through a specific development agreement.

COUNCILMAN BELL WITHDREW THE SECOND AMENDMENT (THE FEES WOULD BE DUE AND PAYABLE ON CERTIFICATE OF OCCUPANCY).

COUNCILMAN ROECKER SECONDED.

Councilman Lamerson asked Ms. Bristol if she found that the cost of commercial impact fees a detriment to attracting new businesses and have any of the new businesses you have been trying to attract been soured by the cost of those impact fees. Ms. Bristol said that any time there is an increase in cost to do business in Prescott it concerns her. However, they are in a very complex economic market. The fact is that the market will dictate where a particular retail will go. Cost is a big concern. A bigger concern to her is delay of the capital improvement program so that when they have additional commercial that comes on line they don't have the infrastructure to support it. They are running out of space for commercial in current areas, so delay of the CIP is of an equal concern.

Councilman Lamerson said that he hopes the public is hearing that there is more than one reason for doing the fees. It has to do with needs for the community as a whole, not just about chasing business away but attracting business and turning down the impact fees could very well damage the opportunity to attract such growth.

Councilman Bell said that based on what Mr. McConnell said awhile back, they would not be delaying projects. Mr. McConnell clarified that it would not have a dramatic delay in those projects.

Councilman Luzius asked for clarification that if it was approved as presented, it would be effective January 11, 2009.

Councilwoman Lopas asked if they did not have to consider the first motion before voting on the impact fees. **COUNCILMAN BELL WITHDREW HIS MOTION; COUNCILMAN ROECKER WITHDREW HIS SECOND.**

COUNCILMAN BELL MOVED TO ADOPT THE WATER AND WASTEWATER CAPITAL IMPROVEMENT PLANS; SECONDED BY COUNCILWOMAN LOPAS; PASSED UNANIMOUSLY.

Leslie Hoy asked if the fees are delayed, when the next study starts from Economists.com or another consultant, if the payback to the ratepayers for that delay get rolled into the next round of impact fees.

Mr. McConnell said that the impact fees are based on a ten-year financing plan. There is one fund, water or sewer, and within those there are two sources of revenue—rates and impact fees. Any expense which is made to implement capital projects requires financing and it is supported by the rates. When the impact fees do come in, at whatever time during that ten-year plan, then the ratepayers are paid back. For clarification, Mayor Wilson suggested that Ms. Hoy and Mr. McConnell discuss this further at a later time.

Councilman Lamerson asked Mr. McConnell if the six-month delay was something that was adaptable. Mr. McConnell it was; the six-month delay can be viewed as a transition period. It is Council's prerogative to make that decision and Mr. Jackson pointed out repeatedly that the impact fees in the study are the maximum and the Council has the prerogative to lower the fees, not impose them, or they could select a different mechanism or change the date. It will not have a dramatic affect on the capital improvement plan to defer the fees. On the other hand, they have looked at projects in the pipeline and the subject of commercial fees is an important one. It does not take too many commercial meters, with current fee being a number that is not covering the cost of the demand, so if they had a large number of real projects in the pipeline the fiscal impact could be dramatic, but that is not the case.

MOTION PASSED UNANIMOUSLY.

COUNCILMAN BELL MOVED TO ADOPT ORDINANCE NO. 4665-0908, WITH IMPOSITION OF THE FEES BEGINNING JULY 11, 2009; SECONDED BY COUNCILMAN ROECKER; PASSED 4 – 3 WITH MAYOR WILSON, COUNCILWOMAN LOPAS AND COUNCILMAN LUZIUS CASTING THE DISSENTING VOTES.

Councilwoman Suttles said that they have not raised those fees in 17 years (sewer). The six months that they are allowing for a change to get in to begin building, will not make or break them. Mr. McConnell said that was correct.

Mayor Wilson said to Mr. Hudder in recognition of his suggestion to form a committee, he would like to impose upon him to round up a crew of contractors and citizen representatives in terms of a blue ribbon panel, to be brought back to him and he would bring it to Council. Mr. Hudder said that he appreciated the challenge and would do that. Mr. Mechanic said that he did not think it was fair for the contractors to control the committee.

- I. Approval of contract with Jim Simmons for legal services in Brogdon v. City of Prescott in the amount of \$50,000.00.

Mr. Kidd said that this item is a request for a legal services contract with Jim Simmons in the Brogdon v. City of Prescott. The trial is set for November 4 and November 14, 2008; there are seven medical experts and extra witnesses being involved. There are substantial numbers of medical records. Mr. Simmons is a certified personal injury specialist with considerable experience in these kinds of cases.

Mr. Kidd said that normally they would present the item in an Executive Session and then come out and take action, but due to the current situation with Executive Sessions, with timing, and the nature of today's meeting, they requested that it be brought forward.

COUNCILMAN ROECKER MOVED TO APPROVE THE CONTRACT WITH JIM SIMMONS FOR LEGAL SERVICES IN BROGDON V. CITY OF PRESCOTT IN THE AMOUNT OF \$50,000;00; SECONDED BY MAYOR WILSON; PASSED UNANIMOUSLY.

- J. Recess into Executive Session.

COUNCILWOMAN SUTTLES MOVED TO RECESS INTO EXECUTIVE SESSION; SECONDED BY COUNCILMAN ROECKER; PASSED UNANIMOUSLY.

The Prescott City Council recessed the meeting at 5:40 p.m.

V. EXECUTIVE SESSION:

- A.* **Discussion or consultation for legal advice with the attorney or attorneys of the public body and discussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation, pursuant to A.R.S. §§38-431.03(A)(3) and (4).**

1. Big Chino Water Ranch.

A.**B.*** Discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee or employee of any public body, except that, with the exception of salary discussions, an officer, appointee or employee may demand that the discussion or consideration occur at a public meeting, pursuant to A.R.S. Section 38-431.03(A)(1).

1. Annual evaluation of City Clerk.

VI. POST EXECUTIVE SESSION:

A. Possible amendment to Employment Agreement with Elizabeth A. Burke.

The Prescott City Council reconvened into Open Session at 5:56 p.m. at which time, **COUNCILMAN BELL MOVED TO AMEND THE EMPLOYMENT AGREEMENT WITH ELIZABETH A BURKE BY GIVING HER A 3% SALARY INCREASE; SECONDED BY COUNCILMAN ROECKER; PASSED UNANIMOUSLY.**

VII. ADJOURNMENT

There being no further business to be discussed, the Regular Voting Meeting of the Prescott City Council held on October 28, 2008 adjourned at 5:56 p.m.

JACK D. WILSON, Mayor

ATTEST:

ELIZABETH A. BURKE, City Clerk

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Regular Meeting of the City Council of the City of Prescott, Arizona held on the 28th day of October, 2008. I further certify the meeting was duly called and held and that a quorum was present.

Dated this ____ day of _____, 2008.

AFFIX
CITY SEAL

ELIZABETH A. BURKE, City Clerk